



International child abduction proceedings before Romanian courts were too slow and did not examine child's best interests

In today's Chamber judgment in the case [Karrer v. Romania](#) (application no. 16965/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a complaint by a father and his daughter about proceedings before the Romanian courts under the Hague Convention on International Child Abduction for her return to Austria.

Principal facts

The applicants, Alexander and Alexandra Karrer, are Austrian nationals, who were born in 1982 and 2006, respectively. Mr Karrer lives in Furstenfeld, Austria, and is the father of Alexandra Karrer, who lives in an unspecified location in Romania.

In April 2004, Mr Karrer married his wife, a Romanian citizen, in Salzburg, Austria. In February 2006, their daughter, Alexandra, was born.

In February 2008, Alexandra's mother filed for divorce in Austria. In September 2008, both Alexandra and her mother left for Romania while the child custody proceedings were still pending in Austria. Mr Karrer was not informed about their departure even though at the time both spouses had joint custody over their daughter.

In September 2008, Mr Karrer requested, under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"), the return of his daughter to Austria, claiming that she had been removed unlawfully.

In the meantime, in November 2008, the Salzburg District Civil Court granted Mr Karrer temporary sole custody of Alexandra until the finalisation of the divorce proceedings.

In a final judgment of July 2009, the Romanian courts, deciding on Mr Karrer's request under the Hague Convention, found that Alexandra's return to Austria would expose her to physical and psychological harm. The Bucharest Court of Appeal observed in particular that Mr Karrer had been violent towards Alexandra's mother and that, as a result, an Austrian court had granted a restraining order in 2008. The Romanian courts were satisfied that Mr Karrer breaching this restraining order in September 2008 had justified Alexandra's mother taking the child to Romania. Finally, the courts reasoned that, even if Mr Karrer had not been violent towards the child, violence could be inferred from his

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

behaviour towards the mother. The Salzburg court's judgment of November 2008 was consequently set aside.

Throughout the domestic proceedings, the Romanian Ministry informed the Austrian authorities of the progress of the Hague Convention proceedings. The information included the date of the hearings and whether or not an appeal had been brought. Apparently, the Romanian Ministry did not have any direct contact with Mr Karrer in connection with the Hague proceedings.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, both applicants complained about the court proceedings in Romania and, more specifically, that they had not been conducted quickly enough, and that Alexandra's father had not been heard by the courts.

The application was lodged with the European Court of Human Rights on 16 March 2010.

Judgment was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
 Egbert **Myjer** (the Netherlands),
 Ján **Šikuta** (Slovakia),
 Ineta **Ziemele** (Latvia),
 Nona **Tsotsoria** (Georgia),
 Mihai **Poalelungi** (Moldova),
 Kristina **Pardalos** (San Marino), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 8

The Court first noted that the mutual enjoyment by parent and child of each other's company constituted a fundamental element of family life and was protected under Article 8 of the European Convention on Human Rights.

The Court then observed that the Romanian courts' assessment of the child's best interests had been based on an expired restraining order, which had been issued in Austria in February 2008 for a period of three months and which had not been renewed. In addition, the Salzburg District Court judgment of November 2008, awarding sole custody to Mr Karrer, had been set aside on the sole ground that it had been delivered after Alexandra's mother had left for Romania with the child.

Furthermore, in assessing the child's best interests, the Romanian courts had not referred to the child's current family situation or to other elements of a psychological, emotional, material or medical nature. Apparently, no attempt had been made to analyse the implications of Alexandra's possible return to Austria.

Although the Romanian Ministry had regularly updated their Austrian counterpart on the status of the domestic proceedings, Mr Karrer had neither been heard by the Romanian courts nor been able to present written submissions in the domestic court proceedings. The Court, observing that the file before the Romanian courts had contained controversial evidence, found that Mr Karrer should have been given the opportunity to present his case either directly or through written submissions, as that had been of paramount importance for ensuring the fairness of the decision-making process.

Finally, the Court recalled that matters related to the reunification of children with their parents had to be handled swiftly, as the passage of time could have irremediable consequences on the relationship.

In that connection, even if the Court were to accept that the six-week time limit set forth under the Hague Convention was not to be interpreted strictly, it found that that time limit had been largely exceeded in the proceedings before the Romanian courts. Those proceedings had lasted 11 months in all and the Romanian Government had not given any satisfactory explanation for that delay.

In conclusion, the Romanian courts had not carried out an in-depth analysis with a view to assessing the child's best interests, and had not given Mr Karrer an opportunity to present his case in an expeditious manner as required under the European Convention of Human Rights interpreted in the light of the Hague Convention.

There had, therefore, been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Romania was to pay Mr Karrer 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 160 for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.